



Homeland
Security

June 6, 2016

REQUEST FOR RECONSIDERATION

FOR: Karen Gorman and Olare Nelson
DOJ Office of Special Counsel

FROM: Ellen Gallagher

SUBJECT: OSC File No. DI-14-5115

Purpose: Consistent with our telephone conversation on June 3, 2016, I am writing to request your active involvement in the above-referenced matter despite efforts by the DHS Office of the Inspector General (DHS OIG) to: a) conduct "spot checks" across immigration detention facilities regarding the use of administrative and disciplinary segregation, a.k.a. solitary confinement, b) review Immigration and Customs Enforcement oversight of contracted detention centers, and c) examine the manner in which the Office for Civil Rights and Civil Liberties (CRCL) receives and manages individual complaints.¹ It has been almost two years since the filing of my original disclosure. Still, it is clear based upon available data that thousands of civil immigration detainees continue to be "sentenced" to protracted periods in solitary confinement (approximately 1/3rd of those sentenced are seriously mentally ill) where they are denied proper medical and mental health care, deteriorate, and in many instances simultaneously miss court mandated evaluations and competency hearings that might otherwise entitle them to receive appointed counsel.²

Discussion: The OSC File No. DI-14-5115 includes alleged violations of law, rule, or regulation that contribute to an ongoing abuse of authority and create a substantial and specific danger to public health and safety. Over the past 22 months, I have forwarded extensive information in an attempt to convey the nature and scope of this problem. Most recently, I have shared with you (on April 23, 2016) a Master Segregation Report for Fiscal Year (FY) 2015 that describes 8,127 detainees in solitary confinement; a Master Segregation Report for FY 2016 covering January and February *only* that describes 922 detainees in solitary confinement; a Master Segregation Report for Code 98 and 99 Disciplinary Cases that features excessive penalties or so

¹ To date based upon staffing and other limitations, I believe DHS OIG spot checks have focused on CBP short term hold facilities with additional outreach scheduled to target family detention centers; not yet investigated is the broader universe of Immigration and Customs Enforcement and contract detention settings.

² As indicated in my earlier memorandum dated August 13, 2015, a settlement agreement in the case of *Franco Gonzalez v. Holder* establishes under the Due Process Clause of the U.S. Constitution and Section 504 of the Rehabilitation Act the right to legal representation for a plaintiff class and sub-classes consisting of: *All individuals who are or will be in [Department of Homeland Security ("DHS")] custody for [immigration] proceedings in California, Arizona, and Washington who have been identified by or to medical personnel, DHS, or an Immigration Judge, as having a serious mental disorder or defect that may render them incompetent to represent themselves in [immigration] proceedings, and who presently lack counsel in their [immigration] proceedings. Sub-Class 1: Individuals in the above-named Plaintiff Class who have a serious mental disorder or defect that renders them incompetent to represent themselves in [immigration] proceedings. Sub-Class 2: Individuals in the above-named Plaintiff Class who have been detained for more than six months.* Many individuals who are or may be covered by the *Franco-Gonzalez* settlement continue to appear on weekly segregation reports received and reviewed by CRCL along with information indicating that they are seriously mentally ill and lack counsel.

called “stacked charges,” as well as internal CRCL communication stating that, “[*Immigration and Customs Enforcement*] ICE appears to interpret the word ‘violation’ to mean ‘offense code.’ ICE’s apparent interpretation of the word ‘violation’ means that [the Performance Based National Detention Standards] PBNDS ceases to have limits, and as a result, detainees may receive three 30 day charges for a single incident, which amounts to a 90 day sentence for one incident.” A particularly egregious illustration of this problem also forwarded earlier to your office as well as to the DHS OIG involves a seriously mentally ill detainee at an ICE run facility (Eloy) sentenced to 390 days in solitary confinement for throwing two cups of his own feces at a security guard.³

In other messages (on June 3, 2016) I have provided Disciplinary Panel notes and Sample 30 Day Reports pertaining to individuals sentenced to solitary confinement for periods far in excess of what has been deemed torture.⁴ The Disciplinary Panel notes show two different detainees sentenced to 60 days in solitary confinement for possession of a cell phone. The Sample 30 Day Reports from Hampton Roads Regional Jail show mentally ill detainees naked in deplorable conditions and denied reentry to the general population until they agree to maintain “proper hygiene.”⁵

Conclusion: Given the urgent and at times life-threatening nature of cases involving immigration detainees with mental health conditions placed without proper care and oversight in administrative or disciplinary segregation, and CRCL’s posture as “a policy office, not a redress office” (described more fully in my August 13, 2015 memorandum) your reengagement is warranted both to protect vulnerable individuals and to inform the work of the DHS OIG. Since CRCL is the only office within DHS mandated to investigate and resolve civil rights and civil liberties complaints, its refusal to act on individual cases, including cases contained in weekly and FY segregation reports creates a substantial and specific danger to the health and safety of immigration detainees as well as the broader universe of people affected adversely by DHS policies or activities, or actions by DHS personnel. Finally, in view of evolving Department of Justice (DOJ) findings and recommendations on this topic,⁶ intervention by your office could be instrumental in halting violations of law, rule, or regulation and ensuring accountability.

³ See the attached email exchange, *Eloy Case* that was posted on CRCL’s share drive by managers in that office.

⁴ In a preface to the 2014 Spanish edition of the *Sourcebook on Solitary Confinement*, Juan Méndez, the United Nations Special Rapporteur on torture, strongly recommends against any use of solitary confinement beyond 15 days, explaining: “Prolonged solitary confinement raises special concerns, because the risk of grave and irreparable harm to the detained person increases with the length of isolation and the uncertainty regarding its duration. In my public declarations on this theme, I have defined prolonged solitary confinement as any period in excess of 15 days. This definition reflects the fact that most of the scientific literature shows that, after 15 days, certain changes in brain functions occur and the harmful psychological effects of isolation can become irreversible.”

⁵ This facility was the subject of a recent article in CNN documenting the death of a seriously mentally ill detainee placed in solitary confinement: <http://www.cnn.com/2016/05/16/us/jamycheal-mitchell-hampton-roads-virginia-jail-lawsuit/index.html>.

⁶ See, e.g., DOJ Report and Recommendations Concerning the Use of Restrictive Housing, January 25, 2016, available at: <https://www.justice.gov/dag/file/815551/download>; and DOJ Investigation of the Pennsylvania Department of Corrections’ Use of Solitary Confinement on Prisoners with Serious Mental Illness and/or Intellectual Disabilities, February 24, 2014, available at https://www.justice.gov/sites/default/files/crt/legacy/2014/02/25/pdoc_finding_2-24-14.pdf.